

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GRANT MONROE,

Defendant-Appellant.

UNPUBLISHED

March 15, 2007

No. 267184

Gogebic Circuit Court

LC No. 03-000168-FH

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

This case is on remand to this Court by the Michigan Supreme Court for consideration as on leave granted. Defendant challenges his sentence of 17 to 30 months' imprisonment imposed on his plea-based conviction of attempted prisoner in possession of a weapon, MCL 800.283(4); MCL 750.92. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm defendant's sentence.

In May 1994, defendant was sentenced to 18 to 30 years' imprisonment for second-degree murder, MCL 750.317, and to a consecutive two-year term of imprisonment for possession of a firearm during the commission of a felony, MCL 750.227b. While a prisoner, in the custody of the Michigan Department of Corrections, defendant obtained a weapon¹ and, as a result of an altercation within the prison, was charged with prisoner in possession of a weapon, MCL 800.283(4), and felonious assault, MCL 750.82. Defendant pleaded guilty to attempted prisoner in possession of a weapon in exchange for dismissal of the original charges and a recommendation by the prosecutor that he receive a sentence within the guidelines.

The sentencing guidelines recommended a minimum term range of zero to 17 months. The trial court sentenced defendant to 17 to 30 months' imprisonment, to be served consecutive to the sentence defendant was serving when he committed the instant offense in accordance with MCL 768.7a(1). Defendant does not take issue with the imposition of a consecutive sentence, but asserts the trial court abused its discretion in failing to impose an intermediate sanction in accordance with MCL 769.34(4)(a) or provide a substantial and compelling reason for its

¹ Defendant had obtained a "shank" comprised of a one-half pair of scissors of approximately seven and one-half inches in length, with a three-inch cutting surface.

sentencing departure to justify the imposition of a prison term rather than jail time for the offense.

This Court reviews for an abuse of discretion a trial court's departure from the minimum sentence ranges recommended under the statutory guidelines. A trial court's departure does not constitute an abuse of discretion if objective and verifiable factors support the substantial and compelling reasons provided by the court for the departure. MCL 769.34(11); *People v Armstrong*, 247 Mich App 423, 424; 636 NW2d 785 (2001). Because the upper end of the guidelines range was 17 months, the trial court was required to impose an intermediate sanction, which does not include a prison sentence, unless the court stated on the record a substantial and compelling reason to sentence defendant to the jurisdiction of the Department of Corrections. MCL 769.31(b); *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002).

A "substantial and compelling" reason is defined as an objective and verifiable reason that "keenly" or "irresistibly" grabs a court's attention and is "of considerable worth" in deciding the length of the sentence. *People v Babcock*, 469 Mich 247, 257; 666 NW2d 231 (2003) (internal citation and quotation marks omitted). In this instance, defendant admitted to possession of the prohibited weapon and use of the weapon to attack another individual. At sentencing, the trial court observed:

[T]he possession of the shank in this case or attempted possession by a prisoner of a weapon was not just something that happened. As the report indicates, Mr. Monroe is serving for a violent offense, the most conceivable violent offense, and the fact that a weapon such as the one possessed by Mr. Monroe is a serious risk to staff and prisoners within a correctional facility suggests nothing but the maximum under the Guideline. Seventeen months under these circumstances is not outlandish, not inappropriate.

In addition, the presentence investigation report (PSIR) recommended that defendant's consecutive sentence be served in prison.

Clearly, the factors noted by the trial court regarding defendant's possession and use of a weapon in the prison were objective and verifiable having been admitted by defendant. Further, the trial indicated, on the record, substantial and compelling reasons pertaining to defendant's history of violent behavior and the serious risk he posed to both staff and prisoners to substantiate a departure. As such, there is no indication that the trial court misunderstood the impact of its departure by failing to indicate it was deviating from the guidelines by sentencing defendant to prison rather than jail. "[A] 'trial court is not required to use any formulaic or magic words' in articulating a substantial and compelling reason to justify a sentencing departure." *People v Reincke*, 469 Mich 957; 670 NW2d 568 (2003), quoting *Babcock, supra* at 259 n 13.

In evaluating whether a trial court abused its discretion, this Court must accord some degree of deference to the trial court because of its knowledge of the facts and direct familiarity with the circumstances of the offender. *Babcock, supra* at 270. In situations where there is more than one reasonable and principled outcome and the trial court selects one of them, there is no abuse of discretion. *Id.* at 269. An abuse of discretion is deemed to have occurred "when the trial court chooses an outcome outside this principled range of outcomes." *Id.*

In this instance, the trial court's determination that a prison sentence was warranted was not outside the principled range of outcomes given defendant's conduct. Defendant admitted having and using a weapon and defendant's history of violent behavior, resulting in his initial imprisonment, was also well documented. As such, the basis for the trial court's decision was objective, verifiable and "capable of being confirmed." *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). The trial court's primary interest in defendant's actual behavior and expressed legitimate concern for the protection of inmates and staff, justify the trial court's conclusion that defendant's sentence be served in prison and is both procedurally practical and sensible as well as within the permissible principled range of outcomes. *Babcock, supra* at 274. "Indeed, defendant's criminal history supports a conclusion that an intermediate sanction as required under the guidelines would be less likely to further the traditional goals of sentencing than a prison sentence." *People v Solmonson*, 261 Mich App 657, 671-672; 683 NW2d 761 (2004) (citations omitted). Hence, the trial court did not abuse its discretion in determining that a guidelines departure would result in a sentence that is more proportionate to the seriousness of defendant's conduct and his criminal history. *Id* at 672. As such, resentencing is not required because it is readily apparent that the trial court would have departed to the same degree and was aware of the guidelines at the time of sentencing so that "it would be a waste of judicial resources to remand the case" merely to obtain a formulaic articulation of the reasons already provided for the departure. *People v Kreger*, 214 Mich App 549, 554-555; 543 NW2d 55 (1995).

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette